IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 5TH JANUARY 2007 / 15TH POUSHA, 1928

WP(C).No. 644 of 2007(B)

(O.S.232/04 OF PRINCIPAL SUB COURT, THALASSERY)

PETITIONER

MUNDYATH VINOD, S/O. PURUSHOTHAMAN,
AGED 36 YEARS, JANAKI NIVAS,
NEAR TALAP HOUSING COLONY,
P.O. PALLIKKUNNU, KANNUR.

BY ADV. SRI. P.M. PAREETH

RESPONDENT

JEENA MADHUSOODANAN, W/O. MADHUSOODANAN,
AGED 28 YEARS, NEAR DR. NEETHI & NAIR,
CHETTIPEEDIKA, P.O. PALLIKKUNNU, KANNUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.644 OF 2007

DATED THIS THE 5th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the plaintiff and respondent, the defendant in O.S.232/04 on the file of Sub Court, Thalassery. The suit was filed for realisation of Rs.1,34,893.50, which according to plaintiff is the balance amount due to him for construction of the building for the respondent. A commission was taken out by petitioner and Commissioner submitted Ext.P2 report. Petitioner thereafter filed Ext.P3 application, for remitting the report back to Commissioner for re-inspection with the help of an expert Engineer. Under Ext.P4 order, learned Sub Judge dismissed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for petitioner was heard.

3. Arguments of learned Counsel appearing for petitioner was that the only evidence, which could be relied on by petitioner to prove the plaint claim, is the report of the Commissioner and Commissioner did not inspect the property with the help of an expert and did not properly assess the details of the building or assess the estimate of the work and in such circumstances, learned Sub Judge should have

allowed the application and remitted the report to the Commissioner.

4. On hearing the learned Counsel appearing for petitioner and on going through Ext.P2 report, Ext.P3 application and Ext.P4 order, I do not find any infirmity in Ext.P4 order, in the circumstances of the case. When petitioner filed the application for appointment of a Commission, he did not seek a direction that Commissioner has to inspect the property or assess the details with the assistance of an expert Engineer as now sought for in Ext.P3 application. So also the details now sought to be noted by petitioner are not matters, which are directed to be noted in the earlier application and omitted to be noted by the Commissioner. It is in such circumstances, learned Sub Judge dismissed the application holding that the report cannot be remitted. Petitioner is at liberty to file a separate application for appointment of a fresh Commission showing the reason and why the report is necessary. If such an application is filed, Sub Judge is to pass appropriate order in accordance with law.

M.SASIDHARAN NAMBIAR,JUDGE

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